IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

WRIT PETITION NO.4371 OF 2005

Shri Deoram Kothod Suroshe & Ors. : Petitioners
(Orig.Plaintiffs)

V/s.

Ms Stomesa Industries : Respondent
(Orig.Defendant)

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Mr.A.L.Kumar for the petitioners.

Mr.A.Y.Sakhare for the respondent.

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CORAM : S.A. BOBDE, J.

August 3, 2005.

P.C.:

1. Rule, returnable forthwith.

Mr.Sakhare, the learned counsel, appears and waives service of rule on behalf of the respondent.

Heard by consent.

2. The petitioners have preferred this petition against the order refusing temporary injunction. The petitioners' suit is, inter alia, for a declaration that the measurement carried out in respect of survey no.52 is illegal and that the respondent be restrained by a

permanent injunction from quarrying in the said area. The dispute pertains to survey no.52 which admeasures about 80 hectares. According to the petitioners, they were in possession of 10 hectares as tenants and the respondent has been granted lease over three hectares for quarrying and mining purpose.

3. According to the petitioners, the measurement was initially carried out in the year 1995 and a map bearing Mojani Register No.34/95 came to be prepared by the T.I.L.R. Thereafter, on the respondent's application, another map bearing Mojani Register no.50/96 was prepared. From this map, the land which was given to the respondent for mining purpose is shown in the colour red. According to the petitioners, this second map is illegal since no notice was issued to them before this measurement was carried out. The learned counsel for the petitioners also submitted that the measurement was directed to be carried out by this Court in Appeal from Order No.734 of 1996 (M/s.Stomesha Industries v. M/s.Prerena Trading Co. & Ors.) decided on 5.8.1996, after issuing notice to the parties, including the petitioners and this has not been done i.e. notice was not issued to the parties.

4. The respondent had admittedly been granted lease for

mining over 7 1/2 acres of land out of survey no.52 of Kamba. As regards the issue that no notice was given to the petitioners before map vide Mojani Register no.50/97 was prepared, this contention does not seem to have been raised before the appellate Court at all. In any case, it is clear that the grievance regarding the measurement done in the year 1997 is being made in a suit which is filed in the year 2004. I am, therefore, not inclined to treat this objection with much seriousness. In these circumstances, after accepting the correctness of map no.50/96, it has been found by the Courts below that the respondent is carrying out the quarrying operations in 7 1/2 acres in pursuance of the lease granted by the Collector.

5. Mr.Kumar, the learned counsel for the petitioners, next contended that the respondent is not entitled to carry on any mining operations in view of the fact that it does not have a valid lease. In the first place, I am of view that this is a matter between the Government and the respondent. Even otherwise, Mr.Sakhare, the learned counsel for the respondent, points out the documents which are stated to be on the record of the trial Court from which it appears that the lease expired in the year 2002. An application for renewal has been made under the Bombay

Minor Mineral Extraction Rules, 1955. Though the respondent's application for renewal was rejected, the respondent has filed an appeal before the Government. Pending the appeal, it appears that the Government has granted stay and, therefore, the Collector has granted permission to quarry under rule 16(4)(3) of the Rules which reads as follows:-

> "16. Period of quarrying lease.--(1) The period for which a quarrying lease may be granted shall not, except with the approval of Government, exceed 10 years. The lease shall be renewable at the option of the lessee for one period not exceeding the duration of the original lease.
>
> (2) .....
> (3) .....
> (4)(1) .....
> (ii) .....
> (iii) If an application for renewal of a lease has been made within the prescribed period, but is not disposed of before the date of expiry of the lease, the period of lease shall be deemed to have been extended

by a further period of three months or till such date on which the applicant is informed about the refusal to grant the renewal of the lease."

6. In this view of the matter, I see no error of law apparent on the face of the record of the appellate Court which warrants interference. Needless to say that the respondent will abide by the decision in the appeal, as far as the quarrying operations are concerned, subject to further orders, if any.

7. The rule stands discharged.

Sd/-

S.A. BOBDE, J.